

### **REMARKS**

In response to the Office Action mailed January 18, 2007, Applicant respectfully requests reconsideration. To further the prosecution of this application, amendments have been made in the claims, and each of the rejections set forth in the Office Action has been carefully considered and is addressed below. The claims as presented are believed to be in condition for allowance.

Claims 1-8 were previously pending in this application. Claims 7 and 8 are amended herein. No claims have been added or canceled. As a result, claims 1-8 remain pending for examination, with claims 1 and 6-8 being independent. No new matter has been added.

#### **Claim Rejections Under 35 U.S.C. §101**

Claims 7-8 are rejected under 35 U.S.C. §101 as purportedly being directed to non-statutory subject matter. Specifically, the Office Action contends that claim 7 recites a recording medium embodying functional descriptive material, and that the medium need not be computer-readable. The Office Action also contends that claim 8 recites functional descriptive material (i.e., a computer executable program).

Without acceding to the propriety of the rejection, each of claims 7 and 8 have been amended to recite a computer readable medium on which is recorded a computer executable program, which is statutory subject matter. Applicants respectfully request withdrawal of the rejection of claims 7 and 8 under 35 U.S.C. §101.

#### **Claim Rejections Under 35 U.S.C. §102**

Claims 1-8 are rejected under 35 U.S.C. §102(e) as purportedly being anticipated by U.S. Patent Publication No. 2006/0098282 to McCart et al ("McCart"). Applicants respectfully traverse this rejection, as the portions of the reference which the Office Action alleges satisfy the claim limitations are not prior art to the present application under 35 U.S.C. §102(e).

The present application was filed September 5, 2003, and claims priority to Japanese Application No. JP 2002/261540, filed September 6, 2002. McCart was filed July 2, 2003 and

(although not explicitly indicated by McCart) appears to claim priority to a provisional application filed July 2, 2002. Because the priority date of the present application precedes the filing date of McCart, McCart is prior art to the present application only to the extent that the provisional application supports the disclosure of McCart.

The portions of McCart which the Office Action cites as purportedly meeting the limitations of independent claims 1, 6, 7 and 8 are not present in the provisional application, and thus are not prior art under §102(e). Specifically, the Office Action contends that ¶[0056] satisfies several of the limitations recited by each of independent claims 1, 6, 7 and 8. However, ¶¶[0055]-[0059] of McCart are not present in the provisional application, and therefore do not anticipate claims 1, 6, 7 and 8.

The portions of McCart which find support in the provisional application do not remedy this deficiency of the cited portions. Using claim 1 as an example, the Office Action contends that ¶[0056] meets the limitations of first detecting means for detecting image pairs each taken in a continuous shooting mode among a plurality of images, and second detecting means for detecting image pairs each taken consecutively within a predetermined time among the plurality of images. The portions of McCart which find support in the provisional application fails to disclose or suggest these limitations.

In view of the foregoing, each of claims 1, 6, 7 and 8 patentably distinguishes over the prior art of record, such that the rejection of each of independent claims 1, 6, 7 and 8 under 35 U.S.C. §102(e) as purportedly being anticipated by McCart should be withdrawn.

Claims 2 – 5 depend from claim 1 and are allowable for at least the same reasons.

**CONCLUSION**

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the application in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Dated: 3-22-07

Respectfully submitted,

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